

ORIGINAL



0000082314

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

DOCKETED

COMMISSIONERS

MIKE GLEASON, Chairman
WILLIAM MUNDELL
JEFF HATCH-MILLER
KRISTIN K. MAYES
GARY PIERCE

2008 FEB 29 A 11: 37

AZ CORP COMMISSION
DOCKET CONTROL

FEB 29 2008

DOCKETED BY

nr

IN THE MATTER OF THE APPLICATION OF
NORTHERN SUNRISE WATER COMPANY FOR
A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER SERVICE IN
COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20453A-06-0247

IN THE MATTER OF THE APPLICATION OF
SOUTHERN SUNRISE WATER COMPANY FOR
A CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER SERVICE IN
COCHISE COUNTY, ARIZONA.

DOCKET NO. W-20454A-06-0248

IN THE MATTER OF THE JOINT APPLICATION
OF NORTHERN SUNRISE WATER COMPANY
AND SOUTHERN SUNRISE WATER COMPANY
FOR THE APPROVAL OF SALE AND
TRANSFER OF WATER UTILITY ASSETS, AND
CANCELLATION OF CERTIFICATES OF
CONVENIENCE AND NECESSITY, FOR
MIRACLE VALLEY WATER COMPANY,
COCHISE WATER COMPANY, HORSESHOE
RANCH WATER COMPANY, CRYSTAL WATER
COMPANY, MUSTANG WATER COMPANY,
CORONADO ESTATES WATER COMPANY,
AND SIERRA SUNSET WATER COMPANY,
LOCATED IN COCHISE COUNTY, ARIZONA.

DOCKET NOS. W-20453A-06-0251
W-20454A-06-0251
W-01646A-06-0251
W-01868A-06-0251
W-02235A-06-0251
W-02316A-06-0251
W-02230A-06-0251
W-01629A-06-0251
W-02240A-06-0251

PROCEDURAL ORDER

BY THE COMMISSION:

In Decision No. 68826 (June 29, 2006), the Arizona Corporation Commission ("Commission") approved the sale and transfer of assets, and cancellation of Certificates of Convenience and Necessity ("CC&N"), of Miracle Valley Water Company, Cochise Water Company, Horseshoe Ranch Water Company, Crystal Water Company, Mustang Water Company, Coronado Estates Water Company and Sierra Sunset Water Company (collectively "McLain Water Systems") to Northern Sunrise Water Company and Southern Sunrise Water Company (collectively "Applicants").

1 In Decision No. 68826, the Commission acknowledged that the McLain Water Systems might
2 be serving customers outside of their certificated boundaries and that it might make sense for
3 Applicants to extend their CC&N boundaries to include these customers as well as other properties
4 that are reasonable and logical. The Commission ordered the Applicants to file by December 31,
5 2007, "applications for approval to extend their CC&Ns to areas being served outside of the CC&N
6 approved in this case."

7 On January 3, 2008, Applicants filed a "Compliance with Decision No. 68826." By their
8 filing, Applicants seek to amend their CC&Ns pursuant to Decision No. 68826.

9 By Procedural Order dated February 8, 2008, the matter was set for a Procedural Conference
10 on February 27, 2008, for the purpose of determining how to proceed in this matter.

11 At the February 27, 2008, Procedural Conference, Applicants and Commission Utilities
12 Division Staff ("Staff") appeared through counsel. Staff concurred that the Applicants' compliance
13 filing should be treated as an Application for a CC&N Extension, and that it is appropriate to set the
14 matter for hearing. Staff believes that the law requires a hearing in this matter. Moreover, Staff
15 noted that because of the unusual history of the former McLain Water Systems, notice to affected
16 property owners is of particular importance, and recommended that Applicants take whatever steps
17 they believe are necessary to assure themselves and the Commission that affected property owners
18 have sufficient notice of the proceeding. Staff believes that it is the Applicants' burden to show that
19 notice is sufficient, but Staff appeared to suggest that the Company may want to be able to show that
20 property owners affirmatively want their property included in the Applicants' certificated areas.
21 Applicants agreed that notice is a critical part of the process, and sought some direction on whether
22 the Commission would require affirmation from affected property owners that they wanted their
23 properties included in the Applicants' CC&Ns.

24 The Commission is always concerned that the public receive adequate notice of proceedings.
25 Staff's comments were intended, we believe, to put the Applicants on notice that they bear
26 responsibility for ensuring that affected property owners receive adequate notice of the proceeding.
27 There was some discussion at the February 27, 2008, Procedural Conference about requiring
28 affirmation from affected property owners that they want their property included in the request,

1 however, it was not clear at that time how such affirmation process would work. Neither Applicants
 2 nor the Commission can control the actions of private property owners. We are concerned that such a
 3 requirement would be difficult to administer, and may result in unwarranted conclusions. We believe
 4 that a fair course of action is to take all reasonable steps to serve notice on the affected property
 5 owners and make such notice as clear as possible that property owners wishing to exclude their
 6 property from the request should file such request with the Commission. Under this approach those
 7 property owners most motivated to act, are charged with taking action. If there is any dispute
 8 between the Applicants and property owners objecting to inclusion of property in the request, the
 9 Commission can resolve such disputes in the course of the hearing.

10 Accordingly, the matter should be set for hearing.

11 IT IS THEREFORE ORDERED that the **hearing** in the above-captioned matter shall be held
 12 on **July 8, 2008, at 10:00 a.m.** or as soon thereafter as is practical, at the Commission's offices,
 13 **Room 222, 400 West Congress St., Tucson, Arizona 85701.**

14 IT IS FURTHER ORDERED that **intervention** shall be in accordance with A.A.C. R14-3-
 15 105, except that all motions to intervene, as well as **any objections to include specific parcels** in the
 16 request, must be filed on or before **June 13, 2008.**

17 IT IS FURTHER ORDERED that Applicant shall serve public notice of the hearing in this
 18 matter, in the following form, type size and style:

19
 20 **PUBLIC NOTICE OF HEARING ON APPLICATION BY**
 21 **NORTHERN SUNRISE WATER COMPANY AND**
 22 **SOUTHERN SUNRSIE WATER COMPANY FOR**
 23 **EXTENSION OF THEIR**
 24 **CERTIFICATES OF CONVENIENCE AND NECESSITY**
 25 **DOCKET NO. W-20453A-06-0247**
 26 **DOCKET NO. W20454A-06-0248**

27 On January 11, 2007, Northern Sunrise Water Company and Southern Sunrise Water
 28 Company (collectively "Applicants") filed an application with the Arizona
 Corporation Commission ("Commission") for an extension of their Certificates of
 Convenience and Necessity ("Certificate") in Cochise County, Arizona. If the
 application is granted the Applicants would be the exclusive providers of water service
 within the requested extension areas, and would be required to provide service on the
 terms and conditions as established by the Commission.

1 APPLICANTS HAVE BEEN DIRECTED TO MAIL THIS NOTICE TO ALL
 2 AFFECTED PROPERTY OWNERS. IF YOU RECEIVED THIS NOTICE BY
 3 MAIL, YOUR PROPERTY IS INCLUDED IN THE REQUEST TO BE INCLUDED
 4 IN APPLICANTS' SERVICE AREAS. AFFECTED PROPERTY OWNERS
 5 WHO DO NOT WISH THEIR PROPERTY TO BE INCLUDED IN THE
 6 APPLICANTS' SERVICE AREAS, MUST FILE A REQUEST WITH THE
 7 COMMISSION TO HAVE THEIR PROPERTY EXCLUDED. IF YOU DO
 8 NOT RESPOND TO THIS NOTICE, AND THE REQUEST IS APPROVED,
 9 YOUR PROPERTY WILL BE INCLUDED IN THE APPLICANTS SERVICE
 10 AREAS. SUCH REQUESTS FOR EXCLUSION SHOULD BE MAILED TO THE
 11 APPLICANTS AND THE ORIGINAL AND 13 COPIES FILED WITH THE
 12 COMMISSION IN CARE OF DOCKET CONTROL, 1200 WEST WASHINGTON,
 13 PHOENIX, ARIZONA 85007, **BY JUNE 13, 2008**. ALL CORRESPONDENCE
 14 SHOULD CONTAIN THE DOCKET NUMBERS SET FORTH ABOVE.

15 The applications are available for inspection during regular business hours at the
 16 offices of the Commission in Phoenix, at 1200 West Washington Street, Phoenix,
 17 Arizona, and in Tucson, at 400 West Congress St. Suite 218, Tucson, Arizona and at
 18 the offices of the Applicants, [APPLICANT INSERT ADDRESS]. The application
 19 is also available on the Commission's website, www.azcc.gov, using the e-Docket
 20 link.

21 The Commission has not yet made a determination on Applicants' request and will
 22 hold a hearing on this matter on **July 8, 2008 at 10:00 a.m.**, or as soon thereafter as is
 23 practical, at the Commission's Tucson offices, **Room 222, 400 West Congress St.,**
 24 **Tucson, Arizona 85701.**

25 The law provides for an open public hearing at which, under appropriate
 26 circumstances, interested persons may intervene in the proceedings and participate as
 27 a party. You may have the right to intervene in the proceeding. Intervention will be
 28 in accordance with A.A.C. R14-3-105, except that all motions to intervene must be
 filed on or before June 13, 2008. Persons desiring to intervene must file a written
 motion to intervene, plus 13 copies, with the Commission and send a copy of the
 motion to Applicants or their counsel and to all parties of record. The motion must, at
 the minimum, contain the following:

1. The name, address, and telephone number of the proposed intervenor and of
any party upon whom service of documents is to be made if different from
that of the intervenor.
2. A short statement of the proposed intervenor's interest in the proceeding (e.g.,
a customer or potential customer of the Applicant, a member or shareholder of
the Applicant, etc.).
3. A statement certifying that a copy of the motion to intervene has been mailed
to the Applicant or its counsel and to all parties of record in the case.

If representation by counsel is required by Rule 31 of the Rules of the Arizona
Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel
to represent the intervenor. The granting of intervention, among other things, entitles
a party to present sworn evidence at the hearing and to cross-examine other witnesses.
However, failure to intervene will not preclude any interested person or entity from
appearing at the hearing and providing public comment on the applications. You will
not receive any further notice of this proceeding unless you request it. Comments may
also be made by writing to the Commission in care of Docket Control, 1200 W.

Washington, Phoenix, Arizona 85007. All correspondence should contain the Docket Numbers set forth above.

If you have any questions about this application, you may contact Applicants at **[APPLICANTS insert contact name, address and telephone number]**. If you want further information on intervention or have questions on how to file comments, you may contact the Consumer Services Section of the Commission at 1200 West Washington Street, Phoenix, Arizona 85007 or call 1-800-222-7000.

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, ADA Coordinator, voice phone number 602/542-3931, E-mail LHogan@cc.state.az.us. Requests should be made as early as possible to allow time to arrange the accommodation.

IT IS FURTHER ORDERED that Applicants shall publish the above notice in a newspaper of general circulation within the proposed extended service territory and shall mail to each property owner in the requested service territory a copy of this notice by **certified first-class U.S. Mail**, to begin as soon as possible and to be completed on or before **April 18, 2007**.

IT IS FURTHER ORDERED that Applicants shall provide a copy of this Procedural Order to all certified public service corporations providing water service in areas contiguous to the proposed extension area. A public service corporation with an interest in the proposed extension areas, and wishing to intervene, shall file any intervention requests by the deadline set forth herein.

IT IS FURTHER ORDERED that if after their review of the form of notice and/or other procedures and guidelines established in this Procedural Order, Applicants and Staff have any concerns or questions, they should request a Procedural Conference to address those concerns by March 17, 2008.

IT IS FURTHER ORDERED that Applicants shall file certifications of mailing and publication as soon as practicable after the mailing and publication have been completed.

IT IS FURTHER ORDERED that notice shall be deemed complete upon mailing and publication, notwithstanding the failure of an individual customer to read or receive the notice.

IT IS FURTHER ORDERED that Staff shall **file its Staff Report** and associated exhibits to be presented at the hearing on or before **June 6, 2008**.

1 IT IS FURTHER ORDERED that **any objection or response** by the Applicant or Intervenor
2 to the Staff Report shall be made in writing and filed on or before **June 20, 2008**.

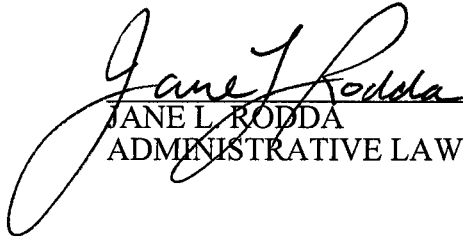
3 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
4 Communications) applies to this proceeding as the matter is now set for public hearing.

5 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
6 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission *pro*
7 *hac vice*.

8 IT IS FURTHER ORDERED that the time periods specified herein shall not be extended
9 pursuant to Rule 6(a) or (e) of the Rules of Civil Procedure.

10 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
11 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

12 Dated this 28th day of February, 2008.

13
14
15 
16 JANE L. RODDA
17 ADMINISTRATIVE LAW JUDGE

18 Copies of the foregoing mailed
19 this 28th day of February, 2008 to:

20 Mr. Jay Shapiro
21 Mr. Patrick Black
22 Fennemore Craig, PC
23 3003 North Central Avenue
24 Suite 2600
25 Phoenix, Arizona 85012
26 Attorneys for Applicants

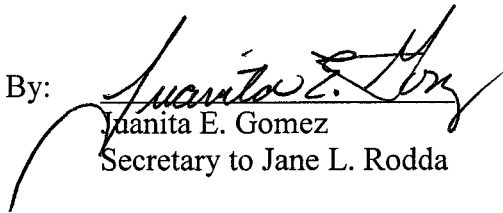
27 Mr. Steven Cockrum
28 5328 Corral Dr.
Hereford, Arizona 85635

Mr. Christopher Kempley, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

1 Mr. Ernest Johnson, Director
2 Utilities Division
3 ARIZONA CORPORATION COMMISSION
4 1200 West Washington Street
5 Phoenix, Arizona 85007

6 ARIZONA REPORTING SERVICE, INC.
7 2200 N. Central Avenue, Suite 502
8 Phoenix, Arizona 85004-1481

9 By:

10 
11 Juanita E. Gomez
12 Secretary to Jane L. Rodda
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28